

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JUSTIN SULLIVAN,

Plaintiff,

v.

AIRCRAFT SERVICES GROUP, INC. AND
KERRY SAILLER,

Defendants.

MARGO K. BRODIE, United States District Judge:

Plaintiff Justin Sullivan commenced the above-captioned action on November 18, 2019, against Defendants Aircraft Services Group, Inc. (“ASG”) and Kerry Sailer, alleging libel per se, intentional interference with contract and with advantageous business relationships, and violations of New York General Business Law § 349. (Compl., Docket Entry No. 1.) On November 10, 2022, Magistrate Judge Cheryl L. Pollak determined that Plaintiff had failed to comply with an earlier discovery order and ordered Plaintiff to reimburse Defendants for attorneys’ fees and costs arising from Defendants’ motion to compel and motion for sanctions in connection with that discovery order. (Order dated Nov. 10, 2022, Docket Entry No. 55.) Defendants jointly moved for fees in the amount of \$29,814.00 on December 9, 2022; Plaintiff responded on December 30, 2022; and Defendants replied on January 13, 2023.¹ On January 17, 2023, Plaintiff moved pursuant to Rule 12(f) of the Federal Rules of Civil Procedure to strike certain assertions in Defendants’ January 13, 2023 reply letter. (Pl.’s Mot. to Strike, Docket Entry No. 60.) The Court referred Defendants’ motion for fees and Plaintiff’s motion to strike to

¹ (Defs.’ Mot. for Fees, Docket Entry No. 56; Decl. of Marissa Koblitiz Kingman, Docket Entry No. 56-1; Decl. of Thomas M. Mealiffe, Docket Entry No. 56-3); (Pl.’s Mem. in Opp’n to Defs.’ Mot. for Fees, Docket Entry No. 58); (Defs.’ Reply Letter, Docket Entry No. 59).

Magistrate Judge Cheryl L. Pollak for a report and recommendation. (Order dated May 12, 2023.) By report and recommendation dated September 1, 2023, Judge Pollak recommended that the Court award Defendants \$19,915.35 in fees incurred in connection with their motion to compel and motion for sanctions (“R&R”). (R&R 2–13.) Judge Pollak further recommended that the Court deny Plaintiff’s motion to strike. (R&R 13–15.)

No objections to the R&R have been filed and the time for doing so has passed.

I. Discussion

A district court reviewing a magistrate judge’s recommended ruling “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “Where parties receive clear notice of the consequences, failure to timely object to a magistrate[] [judge’s] report and recommendation operates as a waiver of further judicial review of the magistrate[] [judge’s] decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)); *see also Miller v. Brightstar Asia, Ltd.*, 43 F.4th 112, 120 (2d Cir. 2022) (“[T]his court has ‘adopted the rule that when a party fails to object timely to a magistrate[] [judge’s] recommended decision, it waives any right to further judicial review of that decision.’” (internal quotation marks omitted) (quoting *Wesolek v. Canadair Ltd.*, 838 F.2d 55, 58 (2d Cir. 1988))); *Phillips v. Long Island R.R. Co.*, 832 F. App’x 99, 100 (2d Cir. 2021) (observing the same rule); *Almonte v. Suffolk County*, 531 F. App’x 107, 109 (2d Cir. 2013) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of the point.” (quoting *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003))); *Sepe v. N.Y. State Ins. Fund*, 466 F. App’x 49, 50 (2d Cir. 2012) (“Failure to object to a magistrate judge’s report and recommendation within the prescribed time limit ‘may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the

consequences of their failure to object.” (first quoting *United States v. Male Juv.*, 121 F.3d 34, 38 (2d Cir. 1997); and then citing *Thomas v. Arn*, 474 U.S. 140, 155 (1985)); *Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C.*, 596 F.3d 84, 92 (2d Cir. 2010) (“[A] party waives appellate review of a decision in a magistrate judge’s [r]eport and [r]ecommendation if the party fails to file timely objections designating the particular issue.” (first citing *Cephas*, 328 F.3d at 107; and then citing *Mario*, 313 F.3d at 766)).

The Court has reviewed the unopposed R&R and, finding no clear error, adopts the R&R pursuant to 28 U.S.C. § 636(b)(1). The Court awards Defendants \$19,915.35 in fees and denies Plaintiff’s motion to strike.

II. Conclusion

Accordingly, the Court adopts the R&R in its entirety and (1) awards Defendants \$19,915.35 in fees incurred in connection with their motion to compel and motion for sanctions, and (2) denies Plaintiff’s motion to strike.

Dated: September 20, 2023
Brooklyn, New York

SO ORDERED:

s/ MKB
MARGO K. BRODIE
United States District Judge